



Agricultural Marketing Service

7 CFR Part 982

[Doc. No. AMS-SC-23-0034]

Hazelnuts Grown in Oregon and Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Hazelnut Marketing Board (Board) to decrease the assessment rate established for the 2023-2024 marketing year and subsequent marketing years. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237. Comments can also be submitted to the Docket Clerk electronically by Email: MarketingOrderComment@usda.gov or via the internet at: <https://www.regulations.gov> Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rule will be included in the record and will be made available to the public and can be viewed at: <https://www.regulations.gov>. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Virginia Tjemsland, Marketing Specialist, or Gary Olson, Chief, West Region Branch, Market Development Division,

Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, or Email:

Virginia.L.Tjemsland@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement No. 115 and Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington. Part 982 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.” The Board locally administers the Order and comprises growers and handlers of hazelnuts operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 supplements and reaffirms Executive Orders 12866 and 13563 and directs agencies to conduct proactive outreach to engage interested and affected parties through a variety of means, such as through field offices, and alternative platforms and media. This action falls within a category of regulatory

actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, hazelnut handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable hazelnuts for the 2023-2024 marketing year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 982.61 provides authority for the Board, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to

administer the program. Members are familiar with the Board's needs and with the costs of goods and services in their local area and are, thus, in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2017-2018 marketing year and subsequent marketing years, the Board recommended, and AMS approved, an assessment rate of \$12 per ton (equivalent to \$0.006 per pound) of hazelnuts. That rate continues in effect from marketing year to marketing year until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Board or other information available to AMS. This proposed rule would decrease the assessment rate from \$0.006 per pound to \$0.005 per pound for the 2023-2024 marketing year and subsequent marketing years.

The Board met on June 29, 2023, and recommended 2023-2024 marketing year expenditures of \$1,815,000 and an assessment rate of \$10 per ton (the equivalent of \$0.005 per pound) of hazelnuts handled for the 2023-2024 marketing year and subsequent marketing years. In comparison, last year's budgeted expenditures were \$2,378,550. The proposed assessment rate of \$0.005 per pound is \$0.001 lower than the rate currently in effect. The Board recommended decreasing the assessment rate to better align assessment revenue with budgeted expenses and to reduce the financial burden on the industry in a period of low commodity prices. The Board projects handler receipts of 85,000 tons (170 million pounds) of hazelnuts for the 2023-2024 marketing year, which is 10,000 tons (20 million pounds) more than was projected for the 2022-2023 marketing year.

The expenditures totaling \$1,815,000 recommended by the Board for the 2023-2024 marketing year include \$670,000 for promotional activities, \$300,000 for contingency/undesignated, \$100,000 for marketing research, \$100,000 for research

endowment, \$378,000 for administrative activities, and \$267,000 for miscellaneous expenses. By comparison, budgeted expenditures for the 2022-2023 marketing year for promotional activities, contingency, marketing research, research endowment, administrative activities and miscellaneous expenses were \$1,251,200, \$200,000, \$150,000, \$100,000, \$347,350, and \$330,000, respectively. The Board's 2023-2024 marketing year budget was reduced to account for generally lower commodity prices and decreased industry revenue.

The expected 170 million pounds of assessable hazelnuts from the 2023 crop would generate \$850,000 in assessment revenue at the proposed assessment rate (170 million pounds multiplied by \$0.005 assessment rate). The remaining \$965,000 needed to cover budgeted expenditures would come from new grant funds and reserve funds carried over from previous marketing years. The Board anticipates \$495,000 in federal grants administered by USDA's Foreign Agricultural Service.¹ The remaining \$470,000 necessary to cover budgeted expenditures would come from its monetary reserve. The recommended assessment rate should be appropriate to ensure that the Board has sufficient revenue, along with grants awarded and reserve funds, to fully fund its recommended 2023-2024 marketing year budgeted expenditures and still maintain a level of reserve funds that the Board believes is appropriate.

The Board derived the recommended assessment rate by considering anticipated expenses, an estimated 2023 crop volume of 170 million pounds of assessable hazelnuts, grants that have been awarded, and the amount of funds available in the authorized reserve. Income derived from handler assessments (\$850,000), and funds from other sources (\$965,000), is expected to be adequate to cover budgeted expenses (\$1,815,000).

¹ Specifically, \$110,000 in Agricultural Trade Promotion program funds, \$300,000 in Market Access Program funds, and \$85,000 in Technical Assistance for Specialty Crop program funds.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Board or other available information.

Although this assessment rate would be in effect for an indefinite period, the Board would continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or AMS. Board meetings are open to the public and interested persons may express their views at these meetings. AMS would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2023-2024 marketing year budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by AMS.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of typically small entities acting on their own behalf.

There are approximately 1,103 producers of hazelnuts in the production area and 14 handlers subject to regulation under the Order. At the time this analysis was prepared, small agricultural producers of hazelnuts were defined by the Small Business Administration (SBA) as those having annual receipts equal to or less than \$3,750,000

(North American Industry Classification System code 111335), and small agricultural service firms were defined as those whose annual receipts are equal to or less than \$34,000,000 (North American Industry Classification System code 115114) (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the average producer price received for hazelnuts sold in Oregon specifically in 2022 was \$1,300 per ton. Total production of hazelnuts for the 2022 season was reported by the NASS to be 68,000 tons. Using the average price and production data from the 2022 crop year, the most recent year for which there is NASS data available, the total 2022 crop value of hazelnuts could be estimated to be \$88,400,000 (68,000 tons times \$1,300 per ton). Dividing the crop value by the estimated number of producers (1,103) yields estimated average receipts per hazelnut producer of \$80,145, which is well below the SBA threshold for small producers.

In addition, according to AMS Market News data, the reported average 2021-2022 marketing year shipping point price for hazelnuts was \$126.82 per 50-pound container, or \$2.54 per pound (\$126.82 per 50-pound container divided by 50 pounds). Multiplying the 2022 hazelnut production of 136,000,000 pounds (68,000 tons) by the estimated average price per pound of \$2.54 equals \$345,440,000 of estimated handler receipts. Dividing this figure by the 14 regulated handlers yields estimated average annual handler receipts of approximately \$24,674,286 (\$345,440,000 divided by 14 handlers), which is below the SBA threshold for small agricultural service firms. Therefore, using the above data, most of the producers and handlers of hazelnuts may be classified as small entities.

This proposal would decrease the assessment rate collected from handlers for the 2023-2024 marketing year and subsequent marketing years from \$0.006 to \$0.005 per pound of assessable hazelnuts. The Board unanimously recommended 2023-2024

marketing year expenditures of \$1,815,000 and an assessment rate of \$10 per ton (\$0.005 per pound) of assessable hazelnuts. The proposed assessment rate of \$0.005 per pound is \$.001 lower than the current rate. The Board expects the industry to handle 85,000 tons (170 million pounds) of assessable hazelnuts during the 2023-2024 marketing year. Thus, at the \$0.005 per pound rate, the Board anticipates \$850,000 in assessment income (170 million pounds multiplied by \$0.005 per pound). The Board also expects to use grant funds and the Board's monetary reserve to cover the remaining \$965,000 of expenses. Income derived from handler assessments, along with grants and reserve funds, should be adequate to meet budgeted expenditures for the 2023-2024 marketing year.

The major expenditures recommended by the Board for the 2023-2024 marketing year include \$670,000 for promotional activities, \$300,000 for contingency/undesignated, \$100,000 for marketing research, \$100,000 for research endowment, \$378,000 for administrative activities, and \$267,000 for miscellaneous expenses. Budgeted expenditures for the 2022-2023 marketing year were \$1,251,200 for promotional activities, \$200,000 for contingency/undesignated, \$150,000 for marketing research, \$100,000 for research endowment, \$347,350 for administrative activities, and \$330,000 for miscellaneous, respectively.

The Board's 2023-2024 marketing year budget was reduced \$563,550 from the prior year's budget to account for generally lower commodity prices and decreased industry revenue. In addition, the Board recommended decreasing the assessment rate to reduce the financial burden on the handlers and growers during the current environment of depressed prices. In recent years, the Board has utilized reserve funds to partially fund its budgeted expenditures. The Board's 2023-2024 marketing year budget again utilizes funds from the financial reserve to subsidize expenditures, but at a lower amount than in previous years. With this action, the Board's reserve balance would be maintained at a

level that the Board believes is appropriate and is compliant with the provisions of the Order.

Prior to arriving at the budget and proposed assessment rate, the Board discussed various alternatives, including maintaining the current assessment rate of \$0.006 per pound and reducing the assessment rate to \$0.0055 per pound (\$11 per ton). However, the Board determined that the recommended assessment rate would be able to reduce the financial burden on the industry and still fund most of the Board's budgeted expenses without drawing down reserves at an unsustainable rate. The assessment rate of \$0.005 per pound of hazelnuts was derived by considering anticipated expenses, the projected volume of assessable hazelnuts, the projected monetary balance held in reserve, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2022 crop year was \$0.65 per pound (\$1,300 per ton). Further, NASS reported the quantity of hazelnuts harvested in the 2022 crop year was 136 million pounds (68,000 tons), which yields estimated total producer revenue for 2022 of \$88,400,000 (\$0.65 per pound multiplied by 136 million pounds). Therefore, utilizing the assessment rate of \$0.005 per pound, the estimated assessment revenue as a percentage of total producer revenue would be approximately 0.77 percent (\$0.005 per pound multiplied by 136 million pounds divided by \$88,400,000 and multiplied by 100).

This proposed action would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to growers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Board's meetings are widely publicized throughout the production area. The hazelnut industry and all interested persons are invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the June 29,

2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large hazelnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information,

USDA has determined that this proposed rule is consistent with and will effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this rule.

List of Subjects in 7 CFR Part 982

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 982 as follows:

PART 982 – HAZELNUTS GROWN IN OREGON AND WASHINGTON.

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise 982.340 to read as follows:

§ 982.340 Assessment rate.

On and after July 1, 2023, an assessment rate of \$0.005 per pound is established for Oregon and Washington hazelnuts.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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